



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
LOUDOUN COUNTY SANITATION AUTHORITY
FOR
ELYSIAN HEIGHTS SEWAGE TREATMENT PLANT
VPDES Permit No. VA0092380**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Loudoun County Sanitation Authority, regarding the Elysian Heights Sewage Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

5. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
6. "Facility" or "Plant" means the Elysian Heights Sewage Treatment Plant located at 43254 Heavenly Circle in Leesburg, Virginia, which treats and discharges treated sewage for a planned housing community.
7. "Loudoun Water" means Loudoun Sanitation Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.*. Loudoun Water is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means VPDES Permit No. VA0092380 which was issued under the State Water Control Law and the Regulation to the Loudoun County Sanitation Authority on December 9, 2008, and which expired on December 8, 2013, and was reissued on December 9, 2013, and expires on December 8, 2018.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge

or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

14. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
15. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. “Va. Code” means the Code of Virginia (1950), as amended.
18. “VAC” means the Virginia Administrative Code.
19. “VPDES” means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Loudoun Water owns and operates the Plant. The Permit allows Loudoun Water to discharge treated sewage and other municipal wastes from the Plant, to the Potomac River, in strict compliance with the terms and conditions of the Permit.
2. The Plant discharges along the Virginia shoreline and to the Potomac River, which is recognized as a Maryland water.
3. This Facility discharges along the Virginia shoreline to the mainstem Potomac River, which is recognized as a Maryland water. This portion of the Potomac is assessed by the Maryland Department of the Environment. The water contact sports use is supporting; the fishing use is impaired for mercury in fish tissue and PCBs in fish tissue. There is a completed downstream TMDL for the Chesapeake Bay. This facility is accounted for in the Chesapeake Bay TMDL and is included in the NPDES Permit Inventory and is part of an aggregated WLA for total Nitrogen, Total Phosphorus, and Total Suspended Solids.
4. On January 3, 2018, Loudoun Water reported an unauthorized discharge of approximately 5,000 gallons of solids from the Plant’s clarifier that was caused by a frozen return activated sludge line.
5. DEQ conducted an inspection of the site on January 30, 2018. The DEQ inspector observed sludge in the receiving water near the Plant’s outfall.

6. DEQ issued Notice of Violation No. W2018-03-N-0003 on March 13, 2018 to Loudoun Water for the unauthorized discharge event.
7. DEQ met with representatives from Loudoun Water on April 26, 2018 to discuss the unauthorized discharge event and corrective action that has been taken. During this meeting Loudoun Water representatives noted that it had changed its Standard Operating Procedures as a result of the incident to include additional measures to prevent the activated sludge line from freezing, and to increase monitoring and visual inspections of the outfall.
8. Part II.F of the Permit states that "Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses."
9. Part II.S of the Permit states "The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment."
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
11. The Department has issued no permits or certificates to Loudoun Water other than VPDES Permit No. VA0092380 for this facility.
12. Based on the report of the unauthorized discharge by Loudoun Water on January 3, 2018, and the DEQ inspection conducted on January 30, 2018, Loudoun Water has violated Part II.F and Part II.S of the Permit, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(1) through C(10), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Loudoun Water, and Loudoun Water agrees to pay a civil charge of \$5,687.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality

Post Office Box 1104
Richmond, Virginia 23218

Loudoun Water shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Loudoun Water shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Loudoun Water for good cause shown by Loudoun Water or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Loudoun Water admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Loudoun Water consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Loudoun Water declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Loudoun Water to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Loudoun Water shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Loudoun Water shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Loudoun Water shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

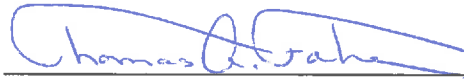
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Loudoun Water. Nevertheless, Loudoun Water agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Loudoun Water has completed all of the requirements of the Order;
 - b. Loudoun Water petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Loudoun Water.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Loudoun Water from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

12. Any plans, reports, schedules or specifications attached hereto or submitted by Loudoun Water and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Loudoun Water certifies that he or she is a responsible authorized to enter into the terms and conditions of this Order and to execute and legally bind Loudoun Water to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Loudoun Water.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Loudoun Water voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 25th day of January, 2019.



Thomas A. Faha Regional Director
Department of Environmental Quality

Loudoun County Sanitation Authority voluntarily agrees to the issuance of this Order.

Date: 11/27/18 By: Carla P. Burleson General Manager
(Person) (Title)
Loudoun County Sanitation Authority

Commonwealth of Virginia
City/County of Loudoun

The foregoing document was signed and acknowledged before me this 28th day of
November, 2018, by Carla P. Burleson who is
General Manager of Loudoun County Sanitation Authority on behalf of the
Authority.

Julie M. Atwell
Notary Public

7150928
Registration No.

My commission expires: 10/31/19

Notary seal:

